

CHAPTER 12

OTHER FINANCIAL MANAGEMENT TOPICS

Purchasing

It does not follow that the money which will be expended pursuant to the certified budget is the same identical money that was raised by the tax levied on the basis of that budget. In other words it is legal to issue purchase orders during one fiscal year and pay for the same during the following fiscal year (**OAG #65-12-3**).

The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the state shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the state (**Constitution of the State of Iowa, Article VII, Section 1**).

All books and other school supplies shall be paid for out of the general fund (**301.4**).

The board of directors may provide and pay out of the general fund to insure school property a sum as necessary, and may purchase dictionaries, library books, including books for the purpose of teaching vocal music, maps, charts, and apparatus [equipment] for the use of the schools as deemed necessary by the board of directors for each school building under its charge; and may furnish schoolbooks to indigent children when they are likely to be deprived of the proper benefits of the school unless so aided (**279.28**).

In the purchasing of textbooks it shall be the duty of the board to take into consideration the books then in use in the respective districts, and they may buy such additional number of said books as may from time to time become necessary to supply their schools, and they may arrange on equitable terms for exchange of books in use for new books adopted (**301.5**).

Supplies for private or parochial schools may not be furnished with or without a vote of the people [except as explicitly allowed by Code] (**1934 Op. Att'y Gen. 680 (#34-8-31)**).

The board of directors of a public school district may enter into exclusive contract with vendors for the purchase of products sold on school premises or at school functions. Vendor contracts for non-educational goods are proprietary in nature and may extend beyond the term of current board members. A marketing firm may be employed to assist with the negotiation and oversight of vendor contracts. While statutory public bidding requirements are not applicable to school district contracts for the purchase of goods and services, public policy supports use of competitive bidding procedures for such contracts (**OAG #00-2-4(L)**).

Public notice in regard to competitive bidding assumes three elements: first, there should be an offering, or notice, extended to the public; second, an opportunity for competition; and third, a basis for an exact comparison of bids (**OAG #80-9-4**).

The school district or AEA shall adopt a policy for purchasing goods or services from private enterprises which requires consideration of purchasing these goods or services from a locally owned business located within the school district or AEA which offers these goods and services if the cost and other considerations are relatively equal. Nothing in this section shall be construed to prevent or prohibit the giving of a preference to businesses owned or operated by minorities or females as may be provided in any other provision of law (**23A.3**).

Every school district and AEA and every person acting as contracting or purchasing agent for any such governing body shall use only those products and provisions grown and coal produced within the state of Iowa, when they are found in marketable quantities in the state and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states. This section shall apply to horticultural products grown in this state even if the products are not in the stage of processing that the agency usually purchases the product. However, this section does not apply to a school district purchasing food while the school district is participating in the federal school lunch program. All requests for proposals for materials, products, supplies, provisions, and other needed articles and services to be purchased at public expense shall not knowingly be written in such a way as to exclude an Iowa-based company capable of filling the needs of the purchasing entity from submitting a responsive proposal (**73.1**).

An officer or person who is connected with, or is a member, agent, representative of the board of a school district or AEA who fails to give preference as required in chapter 73 is guilty of a simple misdemeanor. Each separate case of failure to give preference is a separate offense **(73.5)**.

It shall be unlawful for any school district or AEA board to purchase or use any coal, except that mined or produced within the state by producers who are, at the time such coal is purchased and produced, complying with all the workers' compensation and mining laws of the state. The provisions of this section shall not be applicable if coal produced within the state cannot be procured of a quantity or quality reasonably suited to the needs of such purchaser, nor if the equipment now installed is not reasonably adapted to the use of coal produced within the state, nor if the use of coal produced within the state would materially lessen the efficiency or increase the cost of operating such purchaser's heating or power plant, nor to mines employing miners not now under the provisions of the workers' compensation Act or who permit the miners to work in individual units in their own rooms **(73.6)**.

Any contract entered into or carried out in whole or in part, in violation of the provisions of section 73.6, shall be void and the contract or any claim growing out of the sale, delivery, or use of the coal specified in the contract, shall be unenforceable in any court. In addition to any other proper party or parties, any unsuccessful bidder at a letting provided for in section 73.6 shall have the right to maintain an action in equity to prevent the violation of the terms of section 73.6 **(73.9)**.

If it is determined by the attorney general that any provision of chapter 73 on preferences would cause denial of funds or services from the United States government which would otherwise be available, or would otherwise be inconsistent with requirements of federal law, such provision shall be suspended, but only to the extent necessary to prevent denial of such funds or services or to eliminate the inconsistency with federal requirements **(73.11)**.

All requests hereafter made for bids and proposals for materials, products, supplies, provisions and other needed articles to be purchased at public expense, shall be made in general terms and by general specifications and not by brand name, trade name or other individual mark. All such requests and bids shall contain therein a paragraph in easily legible print, reading as follows: "By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa" **(73.2(1))**.

Notwithstanding any provision of law or rule relating to competitive bidding procedures, every agency, department, commission, board, committee, officer or other governing body of the state shall purchase goods and services supplied by small businesses and targeted small businesses in Iowa. In addition to the other provisions of this section relating to procurement contracts for targeted small businesses, all purchasing authorities shall assure that a proportionate share of small businesses and targeted small businesses identified under the uniform small business vendor application program of the department of economic development are given the opportunity to bid on all solicitations issued by agencies and departments of state government **(73.16(1))**.

A school district or AEA shall establish a procurement goal from certified targeted small businesses of at least ten percent [10%] of the value of anticipated procurements of goods and services including construction, but not including utility services, each fiscal year **(73.16(2)"c"(3))**. Of the total value of anticipated procurements of goods and services, an additional goal shall be established to procure at least forty percent [40%] from minority-owned businesses, and forty percent [40%] from female-owned businesses **(73.16(2)"d")**.

An AEA shall on a quarterly basis, and a school district shall on an annual basis, review the AEA's or school district's anticipated purchasing requirements. An AEA or school district shall notify the department of education, which shall report to the department of economic development, of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the targeted small business procurement goal not later than August 15 of each fiscal year and quarterly thereafter, except that school districts shall report annually **(73.17)**.

The administrator of each AEA and the superintendent of each school district releasing a solicitation for bids or request for proposal under the targeted small business procurement goal program shall consult a directory of certified targeted small businesses produced by the department of economic development that lists all certified targeted small business by category of goods or services provided prior to or upon release of the solicitation and shall send a copy of the request for proposal or solicitation to any appropriate targeted small business listed in the directory. The Iowa department of economic development may charge the AEA or school district a reasonable fee to cover the cost of producing, distributing, and updating the directory **(73.18)**.

In awarding a contract under the targeted small business procurement goal program, an AEA or school district having purchasing authority may use either a negotiated price or bid contract procedure. An AEA or a school district using a negotiated contract shall consider any targeted small business engaged in that business **(73.19)**.

Before announcing a contract award pursuant to the targeted small business procurement goal program, the purchasing authority shall evaluate whether the targeted small business scheduled to receive the award is able to perform the contract. This determination shall include consideration of production and financial capacity and technical competence. If the purchasing authority determines that the targeted small business may be unable to perform, the director of the department of economic development shall be notified and shall assist the targeted small business **(73.20)**.

All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to procurement contracts for targeted small businesses to the extent there is no conflict. If there is a conflict with other laws or rules, then targeted small business procurement program laws govern **(73.21)**.

The Department of Management may impose appropriate sanctions on an AEA or school district in order to ensure compliance with state programs emphasizing equal opportunity through affirmative action, contract compliance policies, and requirements for procurement goals for targeted small businesses **(19B.8)**.

School districts and AEAs shall not, unless specifically authorized by statute, rule, ordinance, or regulation:

- a. Engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise unless such goods or services are for use or consumption exclusively by the school district or AEA.
- b. Offer or provide goods or services to the public for or through another political subdivision, by intergovernmental agreement or otherwise, in violation of chapter 23A on noncompetition by government **(23A.2(1))**.

A school corporation may, by rule, provide for exemption from the application of chapter 23A for the following activities:

- a. Goods and services that are directly and reasonably related to the educational mission of a school.
- b. Goods and services offered only to students, employees, or guests of the school and which cannot be provided by private enterprise at the same or lower cost.
- c. Use of vehicles owned by the school for charter trips offered to the public, full or part-time, or temporary students.
- d. Durable medical equipment or devices sold or leased for use off premises of the school.
- e. Goods or services which are not otherwise available in the quantity or quality required by the school.
- f. Telecommunications other than radio or television stations.
- g. Sponsoring or providing facilities for fitness and recreation.
- h. Food service and sales.
- i. Sale of books, records, tapes, software, educational equipment, and supplies **(23A.2(2))**.

Chapter 23A does not apply to any of the following on-campus activities of a school corporation:

1. Residence halls.
2. Student transportation except as specifically listed in subsection 2”c”.
3. Overnight accommodations for participants in programs of the school, visitors to the school, parents, and alumni.
4. Sponsoring or providing facilities for cultural and athletic events.
5. Items displaying the emblem, mascot, or logo of the school, or that otherwise promote the identity of the school and its programs.
6. Souvenirs and programs relating to events sponsored by the school.
7. Radio and television stations.
9. Goods, products, or professional services which are produced, created, or sold incidental to the schools' teaching, research, and extension missions **(23A.2(10)” k”)**.

The state director of the department of corrections shall cause to be prepared from time to time classified and itemized price lists of the products manufactured by Iowa state industries. Such lists shall be furnished to all boards of directors of school corporations and officials empowered to purchase supplies and equipment for public purposes **(904.807)**.

The board shall take advantage of all tax exemptions on fuel, equipment, and of such other economies as are available **(285.11(5))**.

The board may permit commercial photographers to photograph students on school property **(OAG 79-4-32)**.

Purchase of Transportation Equipment

The powers of the local school board shall be to purchase or lease buses and other transportation facilities, and maintain same, and to enter into contracts for transportation subject to any provisions of law affecting same **(285.10(3))**.

When a school district qualifies to purchase buses, they may purchase buses as follows:

- a. From funds available [on hand] in the general fund or in the PPEL fund.
- b. May purchase buses and enter into contracts to pay for such buses over a five-year [5-year] period as follows: one-fourth [1/4] of the cost when the bus is delivered and the balance in equal annual installments, plus simple interest due. The interest rate shall be the lowest rate available and shall not exceed the rate in effect under section 74A.2. The bus shall serve as security for balance due. Competitive bids on comparable equipment shall be requested on all school bus purchases and shall be based upon minimum construction standards established by the department of education. Bids shall be requested unless the bus is a used or demonstrator bus **(285.10(7))**. Loan and installment purchases would be a PPEL fund expenditure.

The physical plant and equipment levies may be expended for the purchase of transportation equipment for transporting students **(298.3(1)“i”)**. The physical plant and equipment levy may be expended for the purchase, lease, or lease-purchase of a single unit of equipment or technology exceeding \$500 in value per unit **(298.3(1)“c”)**.

The board of education may finance purchase of transportation equipment as follows:

The board may pay all of the cost of each bus from funds on hand in the general fund **(IAC 281--43.26(1))**.

The board of education shall proceed as follows in purchasing school buses:

1. Use separate specification and bid request sheets [subsequently changed in Code].
2. Notify dealers of intent to purchase school transportation equipment and request bids.
3. Reserve right to reject all bids.
4. Require all bids to be on comparable equipment which meets all state and federal requirements.
5. Hold an open meeting for dealers to present merits of their equipment.
6. Review bids, tabulate all bids, make a record of action taken.
7. Sign contracts or orders for purchase of buses. Purchase agreement must provide that dealer will deliver equipment which will pass initial state inspection at no further cost to school and further provide that school board shall withhold at least \$150 until vehicle passes initial state inspection.
8. Notify the bureau of nutrition programs and school transportation of the state department of education of purchase and date of delivery so that arrangements can be made for the initial school bus inspection. No school bus can be put into service until it has passed the pre-use inspection conducted pursuant to Form TR-F-27B by the local board of education and the form has been provided to the bureau of nutrition programs and school transportation. The initial school bus inspection will be conducted at the earliest possible time convenient to the school and the department of education **(IAC 281--43.25)**.

Purchasing for the Child Nutrition Programs

United States Department of Agriculture (USDA) entitlement programs, including the child nutrition programs, follow the procurement rules published in the Code of Federal Regulations. In general, public schools must follow state or local procurement codes except for provisions that are inconsistent with federal procurement requirements. State or local procurement rules must be equal to or more stringent than the federal procurement rules to apply. Refer to 7 CFR Part 3016.

Conflict of Interest

Any officer or employee of the state or of any subdivision thereof who is directly or indirectly interested in any contract to furnish anything of value to the state or any subdivision thereof where such interest is prohibited by statute commits a serious misdemeanor. This section shall not apply to any contract awarded as a result of open, public and competitive bidding **(721.11)**.

A school district director, officer, or teacher shall not act as agent for school textbooks or school supplies, including sports apparel or equipment, in any transaction with a director, officer, or other staff member of the school district during such term of office or employment. An AEA director, officer, or teacher shall not act as an agent for school textbooks or school supplies, including sports apparel or equipment, in any transaction with a director, officer, or other staff member of the AEA or any school district located within the AEA during such time of office or employment. A school district or AEA director, officer, or teacher who acts as agent or dealer in school textbooks or school supplies during the person's term of office or employment in violation of this section shall be deemed guilty of a serious misdemeanor **(301.28)**.

While Iowa Code section 279.7A does not preclude an agent for school textbooks or supplies from serving as a member of a school board of directors, Code section 301.28 does create such a prohibition. Pursuant to Code section 301.28, a

school textbook or school supply salesperson is prohibited from serving as a school board member regardless of whether the salesperson sells books or supplies to the district upon whose board he or she serves (**OAG #92-2-4(L)**).

A member of the board of directors of a school corporation shall not have an interest, direct or indirect, in a contract for the purchase of goods, including materials and profits, and the performance of services for the director's school corporation. A contract entered into in violation of this section is void. This section does not apply to contracts for the purchase of goods or services which benefit a director, or to compensation for part-time or temporary employment which benefits a director, if the benefit to the director does not exceed two thousand five hundred dollars (\$2,500) in a fiscal year, and contracts made by a school board, upon competitive bid in writing, publicly invited and opened...The competitive bid qualification of this section does not apply to a contract for professional services not customarily awarded by competitive bid (**279.7A**).

Section 279.7A applies to situations where the director may only have an ownership interest in a corporation contracting with the board and to placement of a newspaper advertisement in return for consideration such as a fee or charge even if advertisements are only done on an as-needed basis (**OAG #97-7-2(L)**).

A school board member who provides medical services to the football team is not providing "school supplies" within the meaning of section 301.28 (**OAG #76-11-4**).

Any person who serves or is employed by the state or a political subdivision of the state shall not engage in any of the following conduct:

a. Outside employment or an activity that involves the use of the state's or the political subdivision's time, facilities, equipment, and supplies or the use of the state or political subdivision badge, uniform, business card, or other evidences of office or employment to give the person or member of the person's immediate family an advantage or pecuniary benefit that is not available to other similarly situated members or classes of members of the general public. For purposes of this paragraph, a person is not "*similarly situated*" merely by being or being related to a person who serves or is employed by the state or a political subdivision of the state.

b. Outside employment or an activity that involves the receipt of, promise of, or acceptance of money or other consideration by the person, or a member of the person's immediate family, from anyone other than the state or the political subdivision for the performance of any act that the person would be required or expected to perform as a part of the person's regular duties or during the hours during which the person performs service or work for the state or political subdivision of the state.

c. Outside employment or an activity that is subject to the official control, inspection, review, audit, or enforcement authority of the person, during the performance of the person's duties of office or employment (**68B.2A(1)**).

If the outside employment or activity is employment or activity described in subsection 1, paragraph "*a*" or "*b*", the person shall immediately cease the employment or activity. If the outside employment or activity is employment or activity described in subsection 1, paragraph "*c*", or constitutes outside employment or an activity prohibited under rules adopted pursuant to subsection 4 or under the senate or house codes of ethics, unless otherwise provided by law, the person shall take one of the following courses of action:

a. Cease the outside employment or activity.

b. Publicly disclose the existence of the conflict and refrain from taking any official action or performing any official duty that would detrimentally affect or create a benefit for the outside employment or activity. For purposes of this paragraph, "*official action*" or "*official duty*" includes but is not limited to participating in any vote, taking affirmative action to influence any vote, granting any license or permit, determining the facts or law in a contested case or rulemaking proceeding, conducting any inspection, or providing any other official service or thing that is not available generally to members of the public in order to further the interests of the outside employment or activity (**68B.2A(2)**).

Unless otherwise specifically provided the requirements of this section shall be in addition to, and shall not supersede, any other rights or remedies provided by law (**68B.2A(3)**).

The board shall adopt rules pursuant to chapter 17A further delineating particular situations where outside employment or activity of officials and state employees of the executive branch will be deemed to create an unacceptable conflict of interest (**68B.2A(4)**).

It is not prohibited or a conflict of interest for a school board member to vote on a contract, let after public notice and competitive bidding, on which the member has submitted a subcontract bid. However, the member would be well advised to abstain from voting in such circumstances in order to avoid the appearance of impropriety (**OAG #85-2-6(L)**).

Advertising specialty and novelty items which are not used for instructional purposes are not school supplies to which section 301.28 is applicable (**OAG #90-7-2(L)**).

Commercial salespersons of musical instruments may, in the discretion of the local school board, be permitted access to school facilities for the purpose of displaying and disseminating information regarding sale or rental of musical instruments. The local school board may not, however, select a certain store or salesperson and deny access to others. A public school music instructor may recommend a particular instrument to a student, so long as the recommendation is based on a personal or professional preference and the instructor is not acting as an agent for the seller of the instrument (**OAG #80-2-2**).

Contracts in which a board member has any interest are void as contrary to public policy (**Kagy v. Independent School District, 117-694; Town of Hartley v. Floete Lumber Company, 185-861**).

All contracts for transportation service and for drivers of school-owned and operated buses shall be made with someone outside the board except where no other transportation service is available, a board member may transport the member's own children (**285.5(7)**).

Use of Credit Cards

The board [school district and AEA] shall have the authority to include in its rules provisions allowing school corporation employees to use school credit cards to pay for the actual and necessary expenses incurred in the performance of work-related duties (**279.8, 273.3(18)**).

While payment for some travel expenses including transportation tickets and hotel accommodations could be arranged by direct billing to the school district by the vendor, payment for other travel expenses including gasoline is not commonly and may not feasibly be arranged by direct billing. Although travel advances are not allowable because of the audit and allowance provisions of law, the use of credit cards differs from the use of advance payments in that payment is not actually made until after the expenses are incurred. Thus verification of the expense can be made prior to payment by the governmental employer of a credit card billing. If the employer does not allow the expenses, the employer could recover expenses charged to the employer by the official or employee who made the trip (**OAG # 83-7-3(L)**).

Advances

Expenditures must be actually incurred rather than merely reasonably anticipated. In other words, an employer may only reimburse its employee the authorized expenses for which the employee has become liable and is thereby precluded (prohibited) from making advance payments to such employees for obligations which have not yet occurred. This does not prohibit purchase of airline tickets or chartering buses or the payment of advance registration fees for conferences paid on behalf of employees authorized to travel on school business (**OAG #78-12-11**).

Public Purpose

It is unlawful to use public funds to pay for social functions, parties, or other forms of entertainment for employees. This constitutes a use of property owned by the State or a governmental subdivision thereof for a private purpose. This does not apply to conferences in which employees participate in activities related to their duties and are authorized by the superiors and in which entertainment may be an incidental part of the registration fee or other expense of attending. Nor does it apply to the legitimate entertainment or meal expenses of outside consultants which may include the expenses of one or more employees participating therein (**OAG #75-3-12**).

A retirement dinner, however, under appropriate circumstances and with proper motives could be considered to have public purpose. It is the motive for the expenditure that may insulate an officer from criminal liability for misuse of public funds. Any retirement dinner will certainly be subject to a deserved close scrutiny and one is well advised to consider carefully the expenditure of public moneys for such a purpose (**OAG #79-4-26**). This opinion was based on court cases including *Kingman v. Brockton*, 153 Mass. 255, 26 N.E. 98 (1981) which recognized that a public purpose is served and public funds may be spent in commemorating those important historical, military and civil events in which all citizens should take an interest. Also considered was *John R. Grubb v. Iowa Housing Finance Authority*, 255 N.W. 2d 89, 93 (1977), which said that an examination of *Dickinson* [*Dickinson v. Porter*, 240 Iowa 393, 35 N.W. 2d 66 (1948)] and decisions from other jurisdictions discloses a judicial intent to permit the concept of public purpose to have the flexibility and expansive scope required to meet the challenges of increasingly complex social, economic, and technological conditions.

Public employees may use vehicles and computers owned by their governmental subdivision of which they are employees for private purposes if facts and circumstances indicate that the use also serves some public purpose (**OAG #95-5-1**).

Fund Raisers

Internal Revenue Service holds organizations responsible for informing the public what portion of purchases, admissions, etc. are tax deductible as charitable donations (or that they are not). The ruling states the importance of determining, in advance of solicitation, the portion of payments attributable to the purchase of admission or other privilege and the portion solicited as a gift. The ruling says that in those cases in which a fund-raising activity is designed to solicit payments intended to be in part a gift and in part the purchase price of admission or other participation in an event, separate amounts should be stated in the solicitation and clearly indicated on any ticket or other evidence of payment furnished to the contributor. For more information, request Publication 1391 from the IRS and/or consult with a CPA, public accountant, or enrolled agent who actively practices in the area of individual income tax preparation.

Use of Rubber Stamps

A signature on certification of claims may be affixed by stamp or other mechanical means as long as the instrument used is in the general possession and control of the one whose signature it bears, is applied by that person or designee, and is intended by that person to constitute a signature (**OAG #46-1-21**).

Where an administrative officer is required by law to affix a signature to various documents, the method of signing is left entirely to that officer. It may be by stamp, copperplate or otherwise. It is still the administrative officer's act. The responsible official might require of a designee using a mechanical signature device to add the designee's own signature, initials, or even an identifying number for administrative identification purposes if the official so chooses. The signature of the administrative officer is merely directory to the officers who are to act afterwards--the secretary who is to countersign, the secretary and treasurer who is to record, and the treasurer who is to pay (**OAG #53-9-16**).

The president or the president's designee shall sign, using an original or facsimile signature, all school district warrants drawn as provided by law. The board of directors, by resolution, may designate an individual, who shall not be the secretary, to sign warrants on behalf of the president (**291.1**).

The secretary shall draw each order on the treasurer, specify the fund on which it is drawn and the use for which the money is appropriated; countersign using an original or facsimile signature and keep a register of the order, showing the number, date, to whom drawn, the fund upon which it is drawn, the purpose and the amount; and at each regular annual meeting furnish the board with a copy of the register (**291.8**). Note that the secretary does not have the authority in law to have a designee.

Statutory Authority Assigned to State Agencies

Certified Budgeting	Department of Management, SBRC
Authorized Budget	Department of Management, Department of Education, SBRC
Accounting	Department of Education
Auditing	Office of the State Auditor
Interpretation of Law	Department of Education, Attorney General

Duties of the Director of the Department of Education

The department of education is established to act in a policymaking and advisory capacity and to exercise general supervision over the state system of education including all of the following:

- a. Public elementary and secondary schools.
- b. Community colleges.
- c. Area education agencies.
- d. Vocational rehabilitation.
- e. Educational supervision over the elementary and secondary schools under the control of an administrator of a division of the department of human services.
- f. Nonpublic schools to the extent necessary for compliance with Iowa school laws (**256.1(1)**).

Approve, coordinate, and supervise the use of electronic data processing by school districts, area education agencies, and merged areas (**256.9(11)**).

Interpret the school laws and rules relating to the school laws **(256.9(16))**.

Hear and decide appeals arising from the school laws not otherwise specifically granted to the state board **(256.9(17))**.

The Department of Education has explicit authority to interpret school law **(Iowa District Court, Polk County, IASB v. IDoE, CV5557 (2005))**. **Affirmed by the Iowa Supreme Court (No. 51/05-1255 (2007))**.

Prepare forms and procedures as necessary to be used by AEA boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and financial accounting, the execution of contracts, and the submission of reports, and notify the AEA board, district board or school authorities when a report has not been filed in the manner or on the dates prescribed by law or by rule that the school will not be accredited until the report has been properly filed **(256.9(18))**.

The DE is authorized to prescribe a uniform system of accounting. This system is the Uniform Financial Accounting manual **(OAG #83-12-1(L))**.

Determine by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of the department, make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of the schools, and request a state audit of the accounts of a school district, AEA, school official, or school employee handling school funds when it is apparent that an audit should be made **(256.9(19))**.

Accept and administer federal funds apportioned to the state for educational and rehabilitation purposes and accept surplus commodities for distribution when made available by a governmental agency. The director may also accept grants and gifts on behalf of the department **(256.9(7))**.

Cooperate with other governmental agencies and political subdivisions in the development of rules and enforcement of laws relating to education **(256.9(8))**.

Conduct research on education matters **(256.9(9))**.

Approve leases and lease-purchase agreements entered into by AEAs of those leases are for 10 years or more or at an annual cost of \$25,000 or more **(273.3(7))**.

Approve AEA agreements for the joint use of personnel, buildings, facilities, supplies, and equipment with school corporations **(273.3(8))**.

Approve the salaries of AEA administrators **(256.9(27))**.

Conduct or direct the AEA to conduct feasibility surveys and studies, if requested under section 282.11, of the school districts within the AEA service areas and all adjacent territory **(256.9(31)"a")**.

Disburse, transfer, or receive funds as authorized or required under federal or state law or regulation in a manner that utilizes electronic transfer of the funds whenever possible **(256.9(46))**.

Develop and implement a comprehensive management information system [MIS] designed for the purpose of establishing standardized electronic data collections and reporting protocols that facilitate compliance with state and federal reporting requirements, improve school-to-school and district-to-district information exchanges, and maintain the confidentiality of individual student and staff data. The system shall provide for the electronic transfer of individual student records between schools, districts, postsecondary institutions, and the department. The director may establish, to the extent practicable, a uniform coding and reporting system, including a statewide uniform student identification system **(256.9(47))**.

Grant to public school districts and accredited nonpublic schools waivers from statutory obligations with which the entities cannot reasonably comply within two years after a disaster as defined in section 29C.2, subsection 1 **(256.9(57))**.

Duties of the School Budget Review Committee (SBRC)

The SBRC may recommend the revision of any rules, regulations, directive, or forms relating to school district budgeting and accounting, confer with local school boards or their representatives and make recommendations relating

to any budgeting or accounting matters, and direct the director of the department of education or the director of the department of management to make studies and investigations of school costs in any school district **(257.31(1))**.

The SBRC shall meet and hold hearings each year to review unusual circumstances of AEAs, either upon the committee's motion or upon the request of an AEA **(257.32(1))**.

The committee shall adopt recommendations relating to the implementation by school districts and AEAs of procedures pertaining to the preparation of financial reports in conformity with generally accepted accounting principles (GAAP) and submit those recommendations to the state board of education who shall adopt rules requiring the district and AEA to conform to GAAP commencing with the school year beginning July 1, 1996 **(257.31(4))**.

The committee may approve or modify the initial base year district cost of any district which changes accounting procedures **(257.31(8))**. Now that districts and AEAs are required to account and budget on the government GAAP basis, this section is no longer applicable.

The committee shall review the recommendations of the director of the department of education relating to the special education weighting plan, and shall establish a weighting plan for each school year pursuant to section 256B.9, and report the plan to the director of the department of education **(257.31(12))**.

As soon as possible following June 30 of the base year, the SBRC shall determine for each school district the balance of funds, whether positive or negative, raised for special education instruction programs under the special education weighting plan established in section 256B.9. The committee shall certify the balance of funds for each school district to the director of the department of management **(257.31(14))**.

Annually the SBRC shall review the amount of property tax levied by each school district for the cash reserve authorized in section 298.10. If in the committee's judgment, the amount of a district's cash reserve levy is unreasonably high, the committee shall instruct the director of the department of management to reduce that district's tax levy computed under section 257.4 for the following budget year by the amount the cash reserve levy is deemed excessive **(257.31(15))**.

If a school district exceeds its authorized budget or carries a negative unspent balance for 2 or more consecutive years, the committee may recommend that the department implement a phase II on-site visit to conduct a fiscal review **(257.31(18))**.

Notwithstanding the requirements of subsection 24.6(2), paragraph "a", if the municipality is a school corporation, the school corporation may transfer money from the emergency fund to any other fund of the school corporation for the purpose of meeting deficiencies in a fund arising within two years of a disaster as defined in section 29C.2, subsection 1. However, a transfer under this paragraph "b" shall not be made without the written approval of the SBRC **(24.6(2)"b")**.

The committee may authorize a district to spend a reasonable and specified amount from its unexpended fund balance for the following purposes:

- 1) Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the district have approved a [general obligation] bond issue as provided by law or the tax levy provided in section 298.2 [VPPEL].
- 2) The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275, if the costs are incurred within 3 years of the dissolution or reorganization.
- 3) The costs associated with the demolition or repair of a building or structure in a school district if such costs are necessitated by, and incurred within 2 years of, a disaster as defined in section 29C.2, subsection 1 **(257.31(7)"a")**.

The committee shall review the proposed budget and certified budget of each school district, and may make recommendations. The committee may make decisions affecting budgets to the extent provided in chapter 257. The costs and computations referred to in section 257.31 relate to the budget year unless otherwise expressly stated **(257.31(3))**.

The committee may recommend that two or more school districts jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment, and facilities as specified in section 280.15 **(257.31(13))**.

Failure by any school district or AEA to provide information or appear before the committee as requested for the accomplishment of review or hearing is justification for the committee to instruct the director of the Department of Management to withhold any state aid to that district or AEA until the committee's inquiries are satisfied completely **(257.31(11), 257.32(4))**. *Note that most data collections are used by the SBRC to accomplishment their requirements in Code.*

Duties of the State Board of Education

Adopt rules under chapter 17A for carrying out the responsibilities of the department **(256.7(5))**.

The state board shall consider the recommendations of the SBRC and adopt rules specifying procedures and requiring the school districts and AEAs to conform to generally accepted accounting principles (GAAP) commencing with the school year beginning July 1, 1996 **(257.31(4))**.

The state board shall review the proposed budget of each AEA and shall before April 1, either grant approval or return the budget without approval with comments of the state board included. An unapproved budget shall be resubmitted to the state board for final approval not later than April 15. For the fiscal year beginning July 1, 1999, and each succeeding fiscal year, the state board shall give final approval only to budgets submitted by AEAs accredited by the state board or that have been given conditional accreditation by the state board **(273.3(12))**.

Adopt rules pursuant to chapter 17A relating to educational programs and budget limitations for educational programs pursuant to sections 282.29, 282.30, 282.31, and 282.33 **(256.7(10))**.

Prescribe guidelines for facility standards **(256.7(11))**.

Adopt rules that require the board of directors of a school district to waive school fees for indigent families **(256.7(20))**.

Duties of the Department of Management

To prescribe forms on which each municipality (including LEAs), at the time of preparing estimates required under section 24.3, shall be required to compile in parallel columns the following data and estimates for immediate availability to any taxpayer upon request:

For the immediate prior fiscal year, revenue from all sources, other than revenue received from property taxation, allocated to each of the several funds and separately stated as to each such source, and for each fund the unencumbered cash balance thereof at the beginning and end of the year, the amount received by property taxation allocated to each fund, and the amount of actual expenditure for each fund.

For the current fiscal year, actual and estimated revenue, from all sources, other than revenue received from property taxation, and separately stated as to each such source, allocated to each of the several funds, and for each fund the actual unencumbered cash balance available at the beginning of the year, the amount to be received from property taxation allocated to each fund, and the amount of actual and estimated expenditures, whichever is applicable.

For the proposed budget year, an estimate of revenue from all sources, other than revenue to be received from property taxation, separately stated as to each such source, to be allocated to each of the several funds, and for each fund the actual or estimated unencumbered cash balance, whichever is applicable, to be available at the beginning of the year, the amount proposed to be received from property taxation allocated to each fund, and the amount proposed to be expended during the year plus the amount of cash reserve, based on actual experience of prior years, which shall be the necessary cash reserve of the budget adopted exclusive of capital outlay items. The estimated expenditures plus the required cash reserve for the ensuing fiscal year less all estimated or actual unencumbered balances at the beginning of the year and less the estimated income from all sources other than property taxation shall equal the amount to be received from property taxes, and such amount shall be shown on the proposed budget estimate.

To insure uniformity, accuracy, and efficiency in the preparation of budget estimates by municipalities subject to chapter 24, the director shall prescribe the procedures to be used and instruct the appropriate officials of the various municipalities on implementation of the procedures **(8.6(1))**.

Duties of the Office of the Auditor of State

Each school officer shall install and use in the office a system of uniform blanks and forms as prescribed by law (see duties of the director of the department of education and the department of management above). State auditors shall assist the school officers in installing the system **(11.23)**.

The auditor of state shall provide advice and counsel to public entities and certified public accountants concerning audit and examination matters **(11.6(8))**.

The auditor of state may audit or reaudit school districts or AEAs:

- If contracted by the school district or AEA for the annual audit.
- If requested by the director of the department of education **(256.9(19))**.
- If the auditor of state has probable cause to believe such action is necessary in the public interest because of a material deficiency in a previous audit **(11.6(4)"a"(1))**.
- If the auditor of state receives from an elected official or employee of the school district or AEA a written request **(11.6(4)"a"(2))**.
- If the auditor of state receives a petition signed by at least fifty [50] eligible electors of school district or AEA **(11.6(4)"a"(3))**.

The county attorney shall cooperate with the auditor of state to secure correction of a financial irregularity as provided in section 11.15 **(331.756(11))**. If examination discloses any irregularity in the collection or disbursement of public funds or in the abatement of taxes a copy of said report shall be filed with the county attorney and it shall be the county attorney's duty to cooperate with the state auditor, and, in proper cases, with the attorney general, to secure the correction of the irregularity **(11.15)**.

Authority of Law, Rules, Opinions and Departmental Regulations

Law

Iowa school districts and AEAs operate under Dillon's Rule, by Iowa constitution, which states that school corporations possess and can exercise the following powers and no others: Those granted in express words, those necessarily implied or necessarily incident to the powers expressly granted, and those absolutely essential to the declared objects and purposes of the school corporation--not simply convenient or desired, but indispensable (**Merriam v. Moody's Executors, 25 Iowa 163, 170 (1868)**). School districts cannot do by indirect means anything they do not have direct authority to do, and laws granting powers to school districts shall be construed narrowly to limit district authority to the precise language of the authorizing statute (**Bishop v. Iowa State Board of Pub. Instr., 395 NW2d Iowa 838, 891 (1986)**). The mere absence of a prohibition against an action or activity in Code does not give a school district or area education agency authority to initiate that action or activity. It is fundamental that school districts are creatures of statute, with only those powers expressly conferred by statute or reasonably and necessarily implied incident to exercise of a power or performance of a duty expressly conferred or imposed (**Silver Lake Cons. Sch. Dist. V. Parker, 238 Iowa 984, 29 N.W. 2d 219; Ind. Sch. Dist. of Danbury v. Christiansen, 242 Iowa 963, 49 N.W. 2d 263**). Interpretation of school law and rules relating to the school laws may only be done by the Iowa Attorney General's Office and the Iowa Department of Education **(256.9(16))**. These Opinions or Rules, once given, have the effect of law on school corporations. The Department of Education has explicit authority to interpret school law (**Iowa District Court, Polk County, IASB v. IDoE, CV5557 (2005)**). **Affirmed by the Iowa Supreme Court (No. 51/05-1255 (2007))**. Interpretation of school law under chapter 256 is in addition to authority to promulgate rules or issue declaratory orders/rulings.

Attorney General's opinion may be requested by members of the general assembly, state officers (elected or appointed), and county attorneys. Local officials such as school board members, citizens, or governmental staff cannot directly request opinions of the Attorney General.

Unless otherwise specifically provided by the general assembly, whenever the following words are used in a statute enacted after July 1, 1971, their meaning and application shall be:

- a. The word "*shall*" imposes a duty.
- b. The word "*must*" states a requirement.
- c. The word "*may*" confers a power. **(4.1(30))**.

It is well established that where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and we may not search for its meaning beyond the statute itself (**OAG #84-5-1(L)**).

Rules

An administrative rule, violation of which is a crime, may incorporate federal standards by reference, provided these standards are explicit and readily ascertainable (**OAG #87-10-2(L)**).

Opinions of the Attorney General

It shall be the duty of the attorney general to give an opinion in writing, when requested, upon all questions of law submitted by the general assembly or by either house thereof, or by any state officer, elective or appointive. Questions submitted by state officers must be of a public nature and relate to the duties of such officer (**13.2(1)"e"**).

An attorney general's opinion establishes the substantive interpretation of a Code section until it is overruled, revised, withdrawn upon consideration or upset by court decision (**OAG #87-1-5**).

A footnote in OAG #92-11-3 indicates that an opinion based on a Code section which is repealed but replaced with a section having much the same language would continue to apply (**OAG #92-11-3**).

Various Finance Related Compliance Issues

Iowa Gambling

The department of inspections and appeals shall issue the licenses required by chapter 99B for games of skill or chance and raffles (**99B.2(1)"a"**). The Social and Charitable Gambling Program administers Iowa Code Chapter 99B, which regulates games of skill or chance, raffles, bingo, social gambling and amusement devices. Qualified organizations may obtain a social and charitable gambling license to conduct fund-raising activities benefiting educational, civic, public, charitable, patriotic, or religious purposes. The Social and Charitable Gambling License Application is available on-line. The application form describes the various types of licenses available (bingo, raffles, amusement concessions), as well as the licensing fees and requirements. For further information on, or interpretation of gambling laws or rules, contact the Department of Inspections and Appeals, 515-281-6848.

"Game of chance" means a game whereby the result is determined by chance and the player in order to win aligns objects or balls into a prescribed pattern or order or makes certain color patterns appear and specifically includes but is not limited to the game defined as bingo. Game of changes does not include a slot machine (**99B.1(15)**).

"Game of skill" means a game whereby the result is determined by the player directing or throwing objects to designated areas or targets, or by maneuvering water or an object into a designated area, or by maneuvering a dragline device to pick up particular items, or by shooting a gun or rifle (**99B.1(16)**).

"Raffle" means a lottery in which each participant buys a ticket for a chance at a prize with the winner determined by a random method and the winner is not required to be present to win. Raffle does not include a slot machine (**99B.1(26)**).

"Social games" means and includes only the activities permitted by section 99B.12, subsection 2 (**99B.1(27)**).

"Qualified organization" means any licensed organization which dedicates the net receipts of a game of skill, game of chance or raffle as provided in section 99B.7 and meets the requirements of section 99B.7, subsection 1, paragraph "m" (**99B.1(25)**).

Department of Inspection rules include the following license exception for student game nights:

Schools. The following provisions apply to schools as defined in 107.1(10A,99B). Schools are not required to have a license if all of the following are complied with:

- a. Approval.* Public school organizations must receive approval for the game night from the board of directors, and private school organizations must receive approval for the game night from authorities in charge.
- b. Participants.* Only students shall be allowed to participate in game nights sponsored by organizations of public and private schools.
- c. Participation fees.* No participation fees are allowed. Students may use only play money for the game night.
- d. Prizes.* No restrictions or limits are placed upon prizes.
- e. Reports.* No reports are required for schools holding game nights pursuant to this subrule.
- f. Frequency.* There is no restriction on the frequency of game nights for schools (**IAC 481—107.5(1)**).

"School" means an organization within a public school or private school accredited by the state board of education (**IAC 481—107.1**).

The board of directors of a school district may authorize that public schools within that district may authorize that games of skill, games of chance, bingo and raffles may be held at bona fide school functions, such as carnivals, fall festivals, bazaars and similar events. Each school shall obtain a license pursuant to this section prior to permitting the games or activities on the premises. However, the board of directors of a public school district may also be issued a license under this section. However, a board of directors of a public school shall not spend or authorize the expenditure of public funds for the purpose of purchasing a license. The department of inspections and appeals shall provide by rule

a short form application for a license issued to a board of directors. Upon written approval by the board of directors, the license may be used by any school group or parent support group in the district to conduct activities authorized by this section. The board of directors shall not authorize a school group or parent support group to use the license more than twice in 12 months **(99B.7(2)"b")**.

More information on game nights is found in Iowa Code section 99B.8.

Other exceptions from licensure are found in Iowa Code sections 99B.10 to 99B.12A and include such things as bona fide contests or competitions and social games between individuals.

The receipts from a raffle are required to be kept in a separate financial account **(99B.7(1)"d"(3)"d")**. For a school district or AEA this means that the district or AEA shall establish a locally defined project code within its accounting system to track the gross revenues, expenditures, and balances from each specific raffle separately; and no transactions related to that raffle shall be commingled into any other account within the district's or AEA's accounting system.

The regulations, restrictions and exceptions on gambling; the limitations on the nature and value of prizes; the size, location, and amount of signage, and the timing and reporting requirements, are extensive and cannot be covered here. For specific information that applies to your district or AEA, contact the Department of Inspections and Appeals, 515-281-6848.

Sales Tax on Gambling Receipts

Gambling receipts are generally subject to Iowa sales tax, even for nonprofit organizations. So licensees must file a state sales tax return with the Iowa Department of Revenue. The word "donation" printed on a gambling ticket does not exempt it from sales tax. All licensees must make arrangements with the department of revenue to obtain a sales tax permit. For assistance determining who must file and how to file and pay sales tax on gambling receipts, contact the Iowa Department of Revenue, Taxpayer Services Section at 1-800-367-3388.

Prize winners must pay income tax on their winnings of any dollar amount. All prizes awarded are Iowa earned income and are subject to state and federal income tax laws. A person conducting a game of skill, game of chance, or a raffle shall deduct state income taxes, pursuant to section 422.16, subsection 1, from a cash prize awarded to an individual. An amount deducted from the prize for payment of a state tax shall be remitted to the department of revenue on behalf of the prize winner **(99B.21)**.

For the purposes of this subsection, state income tax shall be withheld on winnings in excess of \$600 derived from gambling activities authorized under chapter 99B **(422.16(1)"d")**.

Every person making any payment of a "prize subject to withholding" must deduct and withhold a tax in an amount equal to 5 percent of the prize from a game of skill, a game of chance, or a raffle. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph "e," with the information required by that paragraph. Payers of prizes subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the prize by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph "f." "Prizes subject to withholding" means any payment of a prize where the amount won exceeds \$600 **(IAC 701--46.1(1)"e")**.

Federal postal regulations may prohibit using the mails to distribute printed matter that advertises most forms of gambling. For information, contact the United States Postal Service or review the website at www.usps.com.

Iowa Sales and Use Taxes

Collection of tax on sales

Sales from educational activities are exempt from sales and use taxes if the entire proceeds are expended for educational purpose. The gross receipts from games of skill, games of chance, raffles, and bingo do not qualify for the exemption, and are generally subject to Iowa sales and use tax, even for nonprofit organizations.

The sales price from sales or rental of tangible personal property, or services rendered by any entity where the profits from the sales or rental of the tangible personal property, or services rendered are used by a government entity and where the entire proceeds from the sales, rental, or services are expended for educational purposes. This exemption

does not apply to the sales price from games of skill, games of chance, raffles, and bingo games as defined in chapter 99B. This exemption is disallowed on the amount of the sales price only to the extent the profits from the sales, rental, or services are not used by the appropriate entity and expended for educational purposes **(423.3(78))**.

“*Tangible personal property*” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. “*Tangible personal property*” includes electricity, water, gas, steam, and prewritten computer software **(423.1(54))**.

“*Sales*” or “*sale*” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration **(423.1(46))**.

“*Services*” means all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an employer who pays the wages of an employee for a valuable consideration by any person engaged in any business or occupation specifically enumerated in section 423.2. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user of the service **(423.1(50))**.

“*Lease or rental*”:

- a. “*Lease or rental*” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A “*lease or rental*” may include future options to purchase or extend.
- b. “*Lease or rental*” includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1).
- c. “*Lease or rental*” does not include any of the following:
 - 1) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.
 - 2) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of any option price does not exceed the greater of one hundred dollars or one percent of the total required payments.
 - 3) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property.
- d. This definition shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles; the Internal Revenue Code; the uniform commercial code, chapter 554; or other provisions of federal, state, or local law **(423.1(22))**.

For assistance determining who must obtain a permit and file and how to do so, contact the Iowa Department of Revenue, Taxpayer Services Section at 1-800-367-3388.

Sales tax exemption on purchases

There are hereby specifically exempted from the provisions of the retail sales tax the following: The sales price of goods, wares, or merchandise sold to and of services furnished, and used for public purposes sold to a tax-certifying or tax-levying body of the state or a governmental subdivision of the state. The exemption provided by this subsection shall also apply to all such sales of goods, wares, or merchandise or of services furnished and subject to use tax **(423.3(31))**. There is no exemption number or exemption permit for sales tax purposes by the State of Iowa for school corporations.

“*Goods, wares, or merchandise*” means the same as tangible personal property **(423.1(19))**.

“*Purchase*” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration **(423.1(36))**.

Refunds on sales taxes paid by tax-certifying and tax-levying bodies or governmental subdivisions of the state are available in certain circumstances **(423.4)**.

For assistance on any issues related to sales and use tax or local option sales and services taxes, contact the Iowa Department of Revenue, Taxpayer Services Section at 1-800-367-3388.